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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,716	11/04/2003	Jyh-Han Lin	CE10504JSW	6011
34952	7590	03/04/2005	EXAMINER	
FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. 551 N.W. 77TH STREET, SUITE 111 BOCA RATON, FL 33487			PEREZ GUTIERREZ, RAFAEL	
			ART UNIT	PAPER NUMBER
			2686	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,716	Lin et al.	
	Examiner	Art Unit	
	Rafael Perez-Gutierrez	2686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 23-26 is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 November 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/4/2003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement submitted on November 4, 2003 has been considered by the Examiner and made of record in the application file.

Specification

2. The disclosure is objected to because of the following informalities:
 - a) On page 21 line 5, replace "722" with --732-- in order to concord with figure 7;
 - b) On page 21 line 5, replace "522" with --532-- in order to concord with figure 7;
 - c) On page 21 line 6, replace "732" with --722-- in order to concord with figure 7;
 - d) On page 21 line 6, replace "532" with --522-- in order to concord with figure 7; and
 - e) On page 21 line 18, replace "controller302" with --controller 302--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless -- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such

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treaty in the English language.

Claims 1-3, 6-8, 10, and 20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Preston et al. (U.S. Patent # 6,493,338 B1).

Consider **claims 1, 6-8, 10, and 20**, Preston et al. clearly show and disclose a computer readable medium including instructions for, and a method in a cell phone 14 (mobile telephone/wireless device) (reads on claim 6) (figures 1, 3, and 14) for communicating data over an voice channel (column 3 line 64 - column 4 line 2), comprising:

establishing a standard cellular telephone call (audio communication) (reads on claim 7) between a cell phone 14 (wireless device) and another cell phone 14 (second wireless device) across the voice channel, wherein the voice channel comprises at least a wireless voice communications channel between the cell phone 14 (wireless device) and the other cell phone 14 (second wireless device) (figures 1, 3, and 14, column 3 lines 19-33, and column 3 line 64 - column 4 line 2);

providing a button 206 (user interface) (reads on claim 8) for a user to use the cell phone 14 (wireless device) for communicating data between the cell phone 14 (wireless device) and the other cell phone 14 (second wireless device) across the voice channel (figures 3 and 14, column 4 line 61 - column 5 line 6, and column 9 line 51 - column 10 line 18);

detecting the activation of the button 206 (user interface) by the user (i.e., by the user pushing the button 206) (reads on claims 8 and 10) (figure 14 and column 9 line 57 - column 10 line 17); and

communicating over the voice channel a first data between at least the cell phone 14 (wireless device) and another cell phone 14 (second wireless device) substantially during the

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cellular telephone call (wireless audio communication) between the cell phone 14 (wireless device) and the other cell phone 14 (second wireless device) over the voice channel (figures 1, 3, and 14, column 3 lines 19-33, column 3 line 64 - column 4 line 2, and column 9 line 51 - column 10 line 17).

Consider **claims 2 and 21**, and as applied to claims 1 and 20 above, Preston et al. further disclose wirelessly transmitting the first data from the cell phone 14 (wireless device) into the voice channel and destined for reception by the other cell phone 14 (second wireless device) (column 3 lines 19-33 and column 3 line 64 - column 4 line 2).

Consider **claims 3 and 22**, and as applied to claims 1 and 21 above, Preston et al. also disclose synchronizing the first data with a second data for both the cell phone 14 (wireless device) and the other cell phone 14 (second wireless device) by wireless communication therebetween over the voice channel (figures 17 and 19, column 3 lines 19-33, column 3 line 64 - column 4 line 2, and column 11 line 6 - column 12 line 20).

4. **Claims 11, 12, and 16-18** are rejected under 35 U.S.C. 102(e) as being anticipated by **Ahya et al. (U.S. Patent Application Publication # 2004/0219925 A1)**.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate

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showing under 37 CFR 1.131.

Consider **claims 11 and 16-18**, Ahya et al. clearly show and disclose a wireless device 302 (figure 3), which can be a mobile telephone (paragraph 0025) (reads on claim 16), for communicating data on a voice channel (abstract and paragraph 0005), comprising:

a processor 320 for establishing a standard telephone call (audio connection) (reads on claim 17) with a second device (figure 3 and paragraphs 0032),
an interface (figures 4 and 5), including one or more buttons (paragraph 0035) (reads on claim 18), for a user for sending data to the second device (paragraphs 0033-0035),
a detector for detecting the activation of the interface by the user (paragraphs 0033-0035); and

a memory, communicatively coupled with the processor 320, for storing a first data for sending to the second device during the telephone call (audio connection) with the second device when the detector detects the activation of the interface (abstract, figures 1 and 3-6, and paragraphs 0005, 0029, 0032-0042, 0080, and 0081).

Consider **claim 12**, and as applied to **claim 11 above**, Ahya et al. further disclose that the wireless device 302 also comprises a memory for storing a second data received from the second device, the second data being associated with the first data (paragraph 0081).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

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obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 4, 5, and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Preston et al. (U.S. Patent # 6,493,338 B1)** in view of well known prior art (MPEP 2144.03).

Consider **claims 4 and 5**, and as applied to **claim 3 above**, Preston et al. clearly show and disclose the claimed invention except associating metadata with the first data, the metadata

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indicating that the first data was synchronized, and automatically synchronizing the first data with the second data when the first data is modified and metadata associated with the first data indicates that the first data was synchronized.

Nonetheless, the Examiner takes Official Notice of the fact that it is notoriously well known in the art to associate metadata with data to indicate synchronization and to synchronize data that has been modified when metadata indicates that the data was previously synchronized.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to associate metadata with the first data, as well known in the art, in the method of Preston et al. for the purpose of synchronizing and maintaining synchronization of the data.

Consider **claim 9**, and as applied to **claim 8 above**, Preston et al. clearly show and disclose the claimed invention except wherein the at least one button of the user interface comprises three buttons, a first button for sending data, a second button for receiving data, and a third button for synchronizing data.

Nonetheless, the Examiner takes Official Notice of the fact that it is notoriously well known in the art to have different buttons or keys in a user interface of a wireless device for different, specific functions.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have three buttons as claimed in the user interface of Preston et al. for the purpose of optimal configuration and design as known in the art.

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7. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ahya et al. (U.S. Patent Application Publication # 2004/0219925 A1)** in view of **Preston et al. (U.S. Patent # 6,493,338 B1)**.

Consider **claim 13**, and as applied to **claim 12 above**, Ahya et al. clearly show and disclose the claimed invention except that the wireless device 302 comprises a synchronizer for synchronizing the first data with the second data.

In the field of endeavor, Preston et al. clearly show and disclose a cell phone 14 (wireless device) that includes a synchronizer 312 for synchronizing the first data with the second data (figures 17 and 19, column 3 lines 19-33, column 3 line 64 - column 4 line 2, and column 11 line 6 - column 12 line 20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a synchronizer, as taught by Preston et al., in the device taught by Ahya et al. for the purpose of synchronizing the data stored in the memory.

8. **Claims 14, 15, and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ahya et al. (U.S. Patent Application Publication # 2004/0219925 A1)** in view of **Preston et al. (U.S. Patent # 6,493,338 B1)** as applied to **claim 13**, and further in view of **well known prior art (MPEP 2144.03)**.

Consider **claims 14 and 15**, and as applied to **claim 13 above**, Ahya et al., as modified by Preston et al., clearly show and disclose the claimed invention except storing metadata for associating with the first data, the metadata indicating that the first data was synchronized, and

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automatically synchronizing the first data with the second data when the first data is modified and metadata associated with the first data indicates that the first data was synchronized.

Nonetheless, the Examiner takes Official Notice of the fact that it is notoriously well known in the art to associate metadata with data to indicate synchronization and to synchronize data that has been modified when metadata indicates that the data was previously synchronized.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to associate metadata with the first data, as well known in the art, in the device of Ahya et al., as modified by Preston et al., for the purpose of synchronizing and maintaining synchronization of the data.

Consider **claim 19**, and as applied to **claim 18 above**, Ahya et al., as modified by Preston et al. clearly show and disclose the claimed invention except wherein the at least one button of the user interface comprises three buttons, a first button for sending data, a second button for receiving data, and a third button for synchronizing data.

Nonetheless, the Examiner takes Official Notice of the fact that it is notoriously well known in the art to have different buttons or keys in a user interface of a wireless device for different, specific functions.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have three buttons as claimed in the user interface of Ahya et al., as modified by Preston et al. for the purpose of optimal configuration and design as known in the art.

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Allowable Subject Matter

9. **Claims 23-26** are allowed.

Conclusion

10. Any response to this Office Action should be **faxed to (703) 872-9306 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rafael Perez-Gutierrez whose telephone number is (703) 308-8996. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Marsha D. Banks-Harold can be reached on (703) 305-4379. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700 or call customer service at (703) 306-0377.


Rafael Perez-Gutierrez
R.P.G./rpg **RAFAEL PEREZ-GUTIERREZ**
PATENT EXAMINER

March 2, 2005